

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,
individually and on behalf of a class of all others
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully submit this Notice of Supplemental Authority to bring the Court's attention to a development that has occurred since the filing of their reply brief (ECF 223).

In opposition to Plaintiffs' motion, the City relied on *Betances v. Fischer*, 2024 WL 182044 (S.D.N.Y. Jan. 17, 2024) (*Betances VII*) to argue against adjudicating general damages on a classwide basis. The City asserted: "Plaintiffs' citation to this case is misguided for the obvious reason that the class was decertified due to the need for individualized inquiries that precluded general damages." (Opp'n at 26). However, after briefing in this case was completed, the *Betances* court granted reconsideration and reinstated the class certification in that matter. *Betances v. Fischer*, 2024 WL 3848485 (S.D.N.Y. Aug. 16, 2024) (*Betances VIII*).

As Plaintiffs pointed out in their Reply Brief (ECF 223 at 17), *Betances VII* did **not** "preclude[] general damages" but rather held that, under the facts of that case, individual issues as to damages *in addition to* general damages predominated over the common general damages issue. *Betances VIII* confirms that Plaintiffs' reading of *Betances VII* was correct.

Betances VIII first recognized that for a significant group of class members, damages (though still individualized) *could* be determined without painstaking factual inquiry, so that a class action remained the “superior vehicle” at least for those class members. *Id.* at *5. Accordingly, the Court set a class-wide general damages trial for that group. *Id.* At *8. That is exactly what Plaintiffs propose here.

Equally importantly, however, is what the Court had to say about individual damages. For *all* class members the Court acknowledged that it had “overlooked the tools available for managing class actions that are less drastic than decertification, even where there are individualized issues.” *Id.* at *6. Rather than decertifying the class, abandoning thousands of harmed class members who “may lack the resources or know-how to proceed individually,” the court determined to use management tools “to continue managing the class, at least through determination of general damages for loss-of-liberty as well as for bellwether or test trials of individualized damages.” *Id.* at *5-6. The decision on reconsideration thoughtfully discussed a variety of tools including limited additional discovery, bellwether or test trials, the appointment of a Special Master, and the creation of case-management subclasses. *Id.* at *5-7. *Betances VIII* resoundingly affirms that federal district courts have the tools and capacity to handle class members’ individual damages when duty and justice requires.

Dated: October 14, 2024

/s/ Claudia Wilner

Claudia Wilner
Anjana Malhotra
Edward Krugman
NATIONAL CENTER FOR LAW AND
ECONOMIC JUSTICE
50 Broadway, Suite 1500
New York, NY 10004
(212) 633-6967
wilner@nclej.net
malhotra@nclej.net
krugman@nclej.net

Matthew A. Parham
WESTERN NEW YORK LAW CENTER
37 Franklin Street, 2nd Floor
Buffalo, NY 14202
(716) 828-8422
mparham@wnylc.net

Baher Azmy
A. Chinyere Ezie
CENTER FOR CONSTITUTIONAL
RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6464
bazmy@ccrjustice.org
cezie@ccrjustice.org

Philip Irwin
Jordan Scott Joachim
Christine Nelson
Andrew Timmick
COVINGTON & BURLING, LLP
620 Eighth Ave., Suite 4029
New York, NY 10018
212-841-1000
pirwin@cov.com
jjoachim@cov.com
cnelson@cov.com
atimmick@cov.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2024, the foregoing document and accompanying motion papers were filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Claudia Wilner